
TITLE 312 NATURAL RESOURCES COMMISSION

Economic Impact Statement
LSA Document #12-554**[IC 4-22-2.1-5](#) Statement Concerning Rules Affecting Small Businesses****Estimated Number of Small Businesses Subject to this Rule:**

[312 IAC 11.8](#) would help implement Public Law 151-2012, which amends [IC 14-25-1-8](#), and that provides for the use of mediation to resolve disputes regarding the existence or use of surface water. The rule would apply as a voluntary last resort short of litigation. The rule would clarify that it is available for instances in which the Department of Natural Resources has jurisdiction pertaining to water quantity-in other words, does not apply to matters of water quality under IDEM jurisdiction. For instances in which legislation has otherwise made specific provision for dispute resolution, the rules would require their exhaustion before resort to this remedy. These are through:

- (1) a local unit of government to address a storm water nuisance ([IC 36-9-27.4](#));
- (2) a county drainage board to address obstructions in a mutual drain ([IC 36-9-28.7](#)); and
- (3) disputes among competing riparian owners within public freshwater lakes ([IC 14-26-2-23](#)).

The number of small businesses that could be involved in a dispute regarding surface water is substantial. Surface water disputes arise most typically where there is excess water (as in a flood) or as a result of a drought. Because the legislation authorizing the relief is novel, estimating the number of uses is difficult. Usage is also weather dependent and could become more frequent-as during a sustained drought.

Both in its current form and as [IC 14-25-1-8](#) existed prior to the amendments in P.L.151-2012, the Natural Resources Commission had responsibility for its implementation. The Division of Hearings is the point of contact for the Commission on a daily basis. Over the past 30 years, the Division of Hearings has never received more than a half dozen inquiries concerning the use of [IC 14-25-1-8](#) in a single year. Perhaps half of these would involve a small business. Typically, inquiries were received during droughts.

The remedy afforded by [IC 14-25-1-8](#) seems more attractive since P.L.151, so there may be greater interest in the future. But no inquiries have been received in 2012, even during a serious drought. The best estimate is that not more than six usages of [IC 14-25-1-8](#), as implemented through proposed [312 IAC 11.8](#), would occur in a single year. Perhaps half of these six uses would involve a small business. As likely as not, a small business would be seeking the relief afforded by the statute and rule.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

There is no annual reporting, record keeping, or administrative costs associated with the proposed rule.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

None. Resolving a dispute requires good-faith participation by the parties. In the sense that dispute resolution requires a human expenditure and time, there would be a cost. But this cost is a consequence of [IC 14-26-1-8](#). As likely as not, a small business would be initiating an effort at resolution, and mediation is generally believed to be less costly than litigation. Neither the DNR nor the Commission would impose a cost.

Justification Statement of Requirement or Cost:

Not applicable.

Regulatory Flexibility Analysis of Alternative Methods:

The Commission could remain silent concerning how to implement [IC 14-25-1-8](#). Silence would invite a process that would be more open-ended and likely more costly than the focused approach set forth in proposed [312 IAC 11.8](#).

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